

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANDREW BURNETT,)	Case No.: 10-CV-01903-LHK
)	
Plaintiff,)	ORDER REVOKING PLAINTIFF'S IN
)	FORMA PAUPERIS STATUS
v.)	
)	
CITY OF SANTA CLARA, STEPHEN D.)	
LODGE (CHIEF OF SANTA CLARA POLICE)	
DEPARTMENT), JULIE FREITAS, T. CLARK,)	
PAUL KOFMAN, EDWARD PETERSON,)	
TROY BENSON, PHILAMON ZARAGOZA,)	
DOES 1-5, ET AL.,)	
)	
Defendants.)	

On March 14, 2011, the Court dismissed Plaintiff Andrew Burnett's first amended complaint for failure to state a claim as to any Defendant. *See* Dkt. #76. Plaintiff filed a timely notice of appeal from the Court's Order. *See* Dkt. #77. Thereafter, the Ninth Circuit referred the matter back to this Court "for the limited purpose of determining whether the appeal is frivolous or taken in bad faith." *See* Dkt. #79. The Court **CERTIFIES** that Plaintiff's appeal is frivolous and **REVOKES** Plaintiff's *in forma pauperis* status.

Motions to proceed *in forma pauperis* on appeal are governed by 28 U.S.C. § 1915 and Federal Rule of Appellate Procedure 24. *See Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (quoting *Dixon v. Pitchford*, 843 F.2d 268, 270 (7th Cir. 1988)). Section 1915 permits a court to authorize an appeal without the prepayment of fees if the party submits an affidavit,

1 including a statement of assets, showing that he is unable to pay the required filing fee. 28 U.S.C.
2 § 1915(a)(1).

3 Proceeding *in forma pauperis* on appeal is a privilege, however, not a right. Thus, “[a]n
4 appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in
5 good faith.” 28 U.S.C. § 1915(a)(3). In the absence of some evident improper motive, the
6 applicant’s good faith is established by the presentation of any issue on appeal that is not plainly
7 frivolous. *Farley v. United States*, 354 U.S. 521, 522-23 (1957). An action is frivolous for
8 purposes of section 1915 if it lacks any arguable basis in fact or law. *Neitzke v. Williams*, 490 U.S.
9 319, 328-30 (1989). A complaint or appeal lacks an arguable basis in law only if controlling
10 authority requires a finding that the facts alleged fail to establish even an “arguable legal claim.”
11 *Guti v. INS*, 908 F.2d 495, 496 (9th Cir. 1990) (citation omitted). While the facts alleged should
12 generally be accepted as true, clearly baseless contentions may be dismissed as frivolous under
13 section 1915. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

14 Here, Plaintiff’s first amended complaint is so clearly without an arguable basis in fact or
15 law that no reasonable person could suppose that an appeal of the Court’s rulings would have
16 merit. The Court dismissed Plaintiff’s first amended complaint without leave to amend because it
17 did not appear to the Court that Plaintiff, even with additional opportunities to amend, could allege
18 any set of facts that would give rise to even an “arguable legal claim.”

19 Accordingly, the Court hereby **CERTIFIES** that Plaintiff’s appeal is frivolous pursuant to
20 28 U.S.C. § 1915(a)(3), and **REVOKES** Plaintiff’s *in forma pauperis* status. Any further request
21 to proceed on appeal *in forma pauperis* should be directed, on motion, to the Ninth Circuit, in
22 accordance with Rule 24 of the Federal Rules of Appellate Procedure. See Fed. R. Civ. P. 24(a)(5).
23 **IT IS SO ORDERED.**

24
25 Dated: April 28, 2011


LUCY H. KOH
United States District Judge